# Supreme Court of the United States

OCTOBER TERM, 1951

---

## No. 204

---

RICHARD GUERSERVALDT,

*Petitioner,*

v.

J. HOWARD McGRATH, as Successor to the Alien Property Custodian, and GEORGIA NESSE CLARK, as Treasurer of the United States,

*Respondents.*

---

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

## BRIEF FOR THE PETITIONER

---

ROBERT F. KLEPINGER,
*Counsel for Petitioner.*

WILLIAM W. BARRON,
*Of Counsel.*

WILSON-EYER PRINTING CO. - RE 6003 - WASHINGTON 1, D. C.

# INDEX

## *Subject Index*



## *Citations*

Cases:

PAGE

# Supreme Court of the United States

**OCTOBER TERM, 1951**

---

No. 204

---

RICHARD GUESSEFELDT,

*Petitioner,*

v.

J. HOWARD MCGRATH, as Successor to the Alien Property Custodian, and GEORGIA NEESE CLARK, as Treasurer of the United States,

*Respondents.*

---

**On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit**

---

## BRIEF FOR THE PETITIONER

---

### OPINIONS BELOW

The opinion of the District Court (R. 11-20) is reported in 89 F. Supp. 344. The opinion of the Court of Appeals (R. 24-28) is not yet reported.

### JURISDICTION

The judgment of the court below was entered May 3, 1951, (R. 29). Jurisdiction of this court was invoked under 28 U. S. C. sec. 1254 (1) and the order allowing certiorari was filed October 8, 1951 (R. 31).

## SPECIFICATION OF ERROR

The Court below erred in holding that a German alien, a loyal, friendly and permanent resident of the United States is barred by Section 39 of the Trading With The Enemy Act from recovering under Section 9(a) of that Act his property vested by the Director of Alien Property although that property is concededly untainted by any enemy interest.

## STATUTES INVOLVED

Section 9(a) of the Trading With The Enemy Act (50 U. S. C. App., sec. 9(a)) authorizes suit for the return of property vested under the Act, in the United States District Court for the District of Columbia, by any person not an enemy or an ally of an enemy.

Section 2(a) of the Act (50 U. S. C. App., sec. 2(a)) defines an enemy or an ally of an enemy to be any individual of any nationality "resident within" the territory of any nation with which the United States is at war.

Section 39 of the Act, added by the War Claims Act of July 3, 1948, ch. 826, 62 Stat. 1246, (50 U. S. C. App., sec. 39) provides that the property of any national of Germany or Japan vested after December 17, 1941, in accordance with the Act, shall not be returned to the former owners.

The relevant provisions of these statutes are set out in Appendix A, *infra*.

## STATEMENT

The petitioner, Richard Guessefeldt, brought this action in the district court for the return of property vested by the Director of Alien Property as property of a resident and national of an enemy country (Germany). The complaint, filed December 5, 1949 (R. 2-10), is based upon section 9(a) which authorizes suit for a return of property by one who is not an "enemy or ally of an enemy" within the meaning of that Act.

On February 1, 1950, the plaintiff moved for a summary judgment (R. 10).

On February 3, 1950, the defendant moved to dismiss (R. 11).

The facts are conceded. (89 F. Supp. 344; R. 11-13). Petitioner was born in Germany in 1870. In 1896 he came to Hawaii and has resided there ever since. His only child, a daughter, is a natural born American citizen. In April 1938, accompanied by his wife and daughter, he visited Germany and other European countries on a vacation trip. Reentry permits were issued which expired in March 1940. Unable to secure passage home upon the outbreak of World War II, they were forced to remain involuntarily in Germany (Russian Zone). It was not until July 1949 that the petitioner was able to return.

Petitioner's loyalty to the United States is admitted, and that he is not an enemy or an ally of an enemy. His daughter served as secretary and interpreter in 1945 and 1946 with the British Royal Navy at Sylt in the British Zone. (See, Cong. Rec., July 31, 1950, page A 5784).

On February 5, 1948 and May 12, 1949, the Director of Alien Property vested the property here involved.[1]

[1] (R. 7-10); Vesting Order 13253 (R. 9, 10) was amended June 26, 1951, 16 F. Reg. 6702-6705, July 10, 1951.

Promptly upon his return to the United States, petitioner, on July 18, 1949, filed a claim for the administrative return of his property. December 5, 1949, during the pendency of that claim, the action below was instituted.

The opinion of the district court (R. 12, 13) recites additional facts as follows:

> During his enforced stay in Germany, plaintiff did not own property of any kind there, purchased no war bonds or other securities, did not vote in any elections, did not engage in any efforts directly or indirectly in aid of or assistance to the war effort of Germany or of any enemy or ally of an enemy of the United States, nor was he ever directly or indirectly employed by or in the service of any government which was an enemy of the United States and never committed any act hostile or inimical to the interests of the United States. Plaintiff's entire estate was included in a deed of trust with the Bishop Trust Company, Ltd. of Honolulu, Hawaii, executed in 1934, amended by trust deed of January 18, 1938, and during his absence from Hawaii plaintiff's household goods, books and similar personalty were in storage with the City Transfer Company, Ltd. of Honolulu, Hawaii. On his departure from Hawaii, plaintiff took with him to cover expenses of his trip, the sum of $6,500 and when his return was made impossible, in June 1940 he withdrew $6,000 from the trust fund and again in May 1941 he withdrew an additional $4,000 therefrom.
>
> • • • •
>
> On August 27, 1948, said Trust Company delivered to the defendants the sum of $24,018.75 in cash, being the net income accruing from said trust estate as of June 30, 1948, and said sum is now in the possession of the defendant Treasurer of the United States.
>
> On January 24, 1949 said Trust Company notified the Director of the Office of Alien Property that it would not make further payments of such accrued income in the future and also demanded return of said sum theretofore paid, which demand has not been acknowledged or complied with.
>
> On July 18, 1949 plaintiff filed with the Director

of the Office of Alien Property, a claim under oath in conformity with the requirements of said Director (Form APC-1A), demanding the return of said property and estate, but no application therefor was made to the President of the United States and neither property nor estate has been returned to the plaintiff.

On November 2, 1949 plaintiff and his wife filed their declarations of intention to become naturalized citizens of the United States and on December 9, 1949 they received their first papers (Nos. 78276 and 78274). Since July 1949 plaintiff, his wife and daughter have been staying in Flushing, Long Island, New York, and aside from the wages of their daughter who is employed by a New York Department store, plaintiff and his wife are without funds.

The district court held that petitioner would be entitled to the return of the property under section 9(a) of the Trading With The Enemy Act but for the enactment on July 3, 1948 of section 39 of that Act. (Op. 89 F. Supp. 344, 347; R. 16, 25).[2]

## SUMMARY OF ARGUMENT

The Court below concluded that the facts in the case at bar are almost identical with the facts in *Kaku Nagano* v. *McGrath*, 187 F. 2d 759, which is here on writ of certiorari, No. 169, October term 1951. In the case at bar the court below refused to follow the opinion of the 7th Circuit in the *Nagano* case. The district court held that the petitioner would be entitled to the return of his property under section 9(a) of the Trading With The Enemy Act except for Section 39 of that Act citing *McGrath* v. *Zander*, 85 U. S. App. D. C. 334, 177 F. 2d 649; *Stadtmuller* v. *Miller*, 11 F. 2d 732.

It is clear that the decision of the court below, as well as that of the district court, is based upon the single proposition that the addition in 1948 of Section 39 of the

[2] The opinion below is also printed as Appendix A of the petition in No. 169, *McGrath* v. *Kaku Nagano*, this term.

Trading With The Enemy Act impliedly repealed Section 9(a) of that Act in so far as it authorized non-enemy aliens of German birth, permanent and friendly residents of the United States, to sue and recover property vested by the Office of Alien Property.

The petitioner submits that this holding is erroneous for the following reasons:

1. The real purpose of Section 39 was to bar Germany and Japan and German and Japanese *enemy* aliens from recovering any seized property and to devote the entire proceeds of that property to satisfy war claims against those governments. The former Settlement of War Claims Act of 1928 permitted, within the discretion of the President, the restoration of 80% of all German *enemy* property after World War I and required the withholding of only 20%. Thus Section 39 abrogated the policy of returning 80% of *enemy* property and to that extent repealed the Settlement of War Claims Act of 1928 which is incorporated in the Trading With The Enemy Act.[3] There was no intent to amend or repeal section 9(a) providing for the return of *non-enemy* property and permitting friendly resident aliens to sue for the return of their property.

2. The seizure and confiscation of enemy property in time of war is within the war power of Congress. *U. S.* v. *Chemical Foundation*, 272 U. S. 1.

In time of war the seizure of property of aliens suspected of enemy connections is also justified under the war power. *Central Union Trust Co.* v. *Garvan*, 254 U. S. 554; *Stoehr* v. *Wallace*, 255 U. S. 239; *Commercial Trust Co. of N. J.* v. *Miller*, 262 U. S. 51; *Lamar* v. *Browne*, 92 U. S. 187.

But the power to take and confiscate without compensation the property of aliens is limited to enemies or to

[3] 50 U.S.C.A. App., §§ 9(b), (14), 9(m), 9(q).

property used in aid of the enemy. Property of friendly aliens as distinguished from the property of enemy aliens is entitled to the protection of the 5th Amendment and cannot be appropriated without just compensation. *Silesian American Corp.* v. *Clark*, 332 U. S. 469; *Russian Volunteer Fleet* v. *U. S.*, 282 U. S. 481, 489; *Becker Steel Co.* v. *Cummings*, 296 U. S. 74.

Therefore, to construe section 39 as justifying the expropriation of petitioner's property is a denial of due process.

3. This court will not consider the constitutionality of a statute unless a determination of the constitutional question is unavoidable. *Becker Steel Co.* v. *Cummings*, 296 U. S. 74; *Stochr* v. *Wallace*, 255 U. S. 239; *Central Union Trust Co.* v. *Garvan*, 254 U. S. 554. Nor will it give that construction to a statute which would make the statute unconstitutional or involve grave questions of constitutionality, if any other reasonable construction will uphold the statute and remove all doubts as to its validity.

In this case as pointed out in *Kaku Nagano* v. *McGrath, supra*, section 39 can reasonably be construed in *pari materia* with sections 2, 5 and 9(a) of the Trading With The Enemy Act so as to accomplish the purpose of section 39 and yet maintain the traditional and humane policy of returning to friendly aliens property which was mistakenly seized in time of war or, as in the case at bar, long after hostilities had ceased.

## ARGUMENT

### I.

### SECTION 39 DOES NOT AMEND SECTION 9(A) NOR DESTROY THE RIGHT OF LOYAL RESIDENT ALIENS TO RECOVER VESTED PROPERTY.

The sole question at issue in the case at bar is whether section 39 of the Trading With The Enemy Act pro-

hibits the return of property vested by the Director of Alien Property, to persons of German birth, residing in the United States and friendly and loyal to the government of the United States and its institutions. Section 9(a) of that Act before the enactment of section 39 permitted such aliens to sue for, and recover, property so vested. The district court read section 39 literally (Mem. Op. R. 11 at R. 16-20). The court below affirmed the judgment of the district court and in its opinion (R. 24-28 at R. 25) noted that "The lower court decided that the appellant would be entitled to the return of this property under that section [section 9(a)] of the Trading With The Enemy Act, *supra*, except for section 39 of the Act. *McGrath* v. *Zander*, 85 U. S. App. D. C., 334, 177 F. 2d 649, (1949), which affirmed the rule in *Stadtmuller* v. *Miller*, 11 F. 2d 732, (C. C. A. 2, 1926).".

In reaching this result both the court below and the district court gave a strict and literal construction to section 39 and refused to read that section in harmony with sections 9(a), 2 and 5 of the Act.

In *Kaku Nagano* v. *McGrath*, 88 F. Supp. 897, Judge Campbell reached an opposite conclusion. And in the same case on appeal, Judge Lindley, writing for the unanimous court, 187 F. 2d 759, reviewed the legislative history and concluded—

(1) That section 39 was not intended to repeal section 9(a);

(2) That in at least two instances Congress refused to enact legislation expressly amending or repealing section 9(a). As late as 1946, the Senate Judiciary Committee deleted a provision from H. R. 6890 which proposed to cut off the right of a friendly foreign national to sue for and obtain return of his property under section 9(a). The committee's report explained the amendment as designed to eliminate such

proposal thus retaining in full the "rights under section 9(a) which friendly foreign nationals together with United States citizens have had for more than 25 years under the Act."

(3) That implied repeals are frowned upon and that section 9(a) was not impliedly repealed by section 39 since the two sections can be harmoniously read to preserve and give effect to the intention of Congress to forfeit irrevocably enemy owned property without foreclosing the right of friendly aliens to recover vested property;

(4) That if section 39 should be interpreted to deny to friendly aliens the right to recover their vested property or compensation for its taking, then that section would be of doubtful constitutionality.

Judge Lindley's conclusions that section 9(a) was not repealed by subsequent legislation is confirmed by the cases. Repeated assaults upon that section have been made without avail. Indeed, the court below in *Uebersee Finanz Korporation* v. *Markham*, App. D. C., 158 F. 2d 313 at page 316, footnote 5[4] pointed out that Congress has summarily rejected all attempts to nullify section 9.

This court itself has emphasized the soundness of that conclusion in *Markham* v. *Cabell*, 326 U. S. 404; *Clark* v. *Uebersee Finanz Korporation*, 332 U. S. 480. The same result was reached in *Draeger Shipping Co.* v. *Crowley*, 49 F. Supp. 215.

---

[4] Footnote from page 316, *Uebersee Finanz Korporation* v. *Markham, supra:*

"5. H.R. 4840, 78th Cong. 2d Sess. (died in committee). H.R. 5089, 79th Cong. 2d Sess. (reintroduced as H.R. 6890, 79th Cong. 2d Sess.) contained in § 33 provision that 'A foreign * * * national * * * may not * * * maintain a suit pursuant to 9(a) hereof.' This section, together with an identical section contained in S. 2378, 79th Cong. 2d Sess., was deleted and the remainder of the bill was passed."

In *Ex Parte Kumezo Kawato*, (1942), 317 U. S. 69, 63 S. Ct. 115, while we were at war with Germany and Japan, this Court held that the Trading With The Enemy Act was never intended, without Presidential proclamation, to affect resident aliens at all. The decision pointed to the explanation by the sponsor of the original Act that "A German resident in the United States is not an enemy under the bill" unless so proclaimed by the President; that the President has never exercised this power; that "in the very terms of the bill defining an enemy" (section 2), "German residents in the United States have all rights in this respect of native born citizens." (Footnote 12). Nearly two years after section 39 was added, this court adhered to those views observing that in the *Kawato* case: "A unanimous Court recently clarified both the privilege of access to our courts and the limitations upon it." *Johnson* v. *Eisentrager*, (1950), 339 U. S. 763, 776, 70 S. Ct. 936, 943.

The real objective of section 39 was to abrogate the authority in the Settlement of War Claims Act of 1928[*] to restore 80 per cent of all German *enemy* property after World War I and to withhold only 20 per cent.

This is made clear by the author of the bill enacting section 39, who said (94 Cong. Rec., pp. 552, 568):

> "Any property that has been wrongly taken over from a friendly alien living in the United States, I understand may be returned to him.
>
> • • • •
>
> "Of course, people are coming before the Alien Property Custodian today and saying 'I am a friend of America.' Why? • • • *That is what they did after the first World War*, and the Germans got 80 per cent back • • •" (Emphasis supplied.)

---

[*] Ch. 167, 45 Stat. 254 (50 U.S.C.A. App., secs. 9(b) (14), 9(m), 9(q).)

He had previously submitted a comparative parallel analysis of earlier bills. This recites that the proposed language was similar to that in the resolution terminating World War I, and that "In 1928, 80 percent of it was returned and the balance retained which we still possess * * *" (Hearings on H.R. 873, H.R. 1823, H.R. 1000, H.R. 2823, at page 418, March and April 1947, 80th Congress.)

Thus, it is apparent that Congress was determined to end *this* policy referred to specifically by the court below in *Swiss Nat. Ins. Co.* v. *Crowley*, 136 F. 2d 265, at page 268. Congress simply meant by enacting section 39 that no property of any Japanese or German national *who is an enemy as defined in section 2 could be returned.* The new section 39 thus inaugurated the policy of *nonreturn of any property to enemies.* It reversed that policy which began in 1928 whereby 80 per cent of German *enemy* property was returnable. It also made clear the determination of Congress that no portion of Japanese *enemy* property would be restored.

The opinion below gives no weight to the views of the Attorney General and of the sponsor of section 39, and the Congressional reports which demonstrate beyond question that the section applies only to *enemy* property. The sole explanation of section 39 by the Senate committee (S. Rept. 1742, p. 7, 80th Cong.) was that the section would retain the *enemy* assets then held in the hands of the Alien Property Custodian for the creation of the War Claims Fund provided in the bill.

The incisive analysis of the legislative history and purpose of section 39 by the Court of Appeals for the Seventh Circuit speaks for itself (*Kaku Nagano* v. *McGrath*, 187 F. 2d at page 768) and, we submit, is a complete refutation of the conclusion reached by the court below.

Source references to the entire legislative history of section 39 enacted in H. R. 4044, 80th Congress, are set forth in Appendix B, *infra*.

## II.

### SECTION 39 AS CONSTRUED BY THE COURT BELOW IS PROBABLY UNCONSTITUTIONAL.

The district court in its Memorandum Opinion in the case at bar (R. 11 at R. 19) brushed aside the objection that section 39 of the Trading With The Enemy Act does violence to the 5th Amendment to the Constitution. That opinion states no reasons for the decision that the property of friendly aliens is entitled to no protection under the 5th Amendment as held by that court and the court below.

We will not burden this court with extended argument on questions long settled. Our summary of argument perhaps is enough to show that the property of friendly aliens as distinguished from that of property of enemy aliens is entitled to the full protection of that Amendment to the same extent as is the property of American citizens. *Silesian American Corp.* v. *Clark*, 332 U. S. 469; *Russian Volunteer Fleet* v. *U. S.*, 282 U. S. 481, 489; *Stadtmuller* v. *Miller*, 11 F. 2d 732; *Voswinckel* v. *1st Fed. Trust Co.*, 10 F. 2d 19; *Ex parte Kumezo Kauato*, 317 U. S. 69; *Becker Steel Co.* v. *Cummings*, 296 U. S. 74.

Therefore, to construe section 39 as sanctioning the confiscation of the property of petitioner is not only a denial of due process of law, but is the forbidden taking of his property for a public use without just compensation. *Spector Motor Service* v. *McLaughlin*, 323 U. S. 101; *Alma Motor Co.* v. *Timken-Detroit Axle Co.*, 329 U. S. 129; *Sweatt* v. *Painter*, 339 U. S. 629.

We do not question that the seizure and confiscation of enemy property in time of war is within the Congres-

sional power. It is indeed a necessary and salutary power. *U. S.* v. *Chemical Foundation*, 272 U. S. 1.

Furthermore, in time of war the Executive has a wide discretion and may seize the property of alien residents suspected of enemy connections, or of property which it is believed may be used in aid of the enemy: *Central Union Trust Co.* v. *Garvan*, 254 U. S. 554; *Stoehr* v. *Wallace*; 255 U. S. 239; *Commercial Trust Co. of N. J.* v. *Miller*, 262 U. S. 51; *Lamar* v. *Browne*, 92 U. S. 187.

But neither Congress nor the Executive has the power to take and confiscate without compensation the property of loyal persons whether citizens or aliens. The 5th Amendment forbids this.

## III.

### SECTION 39 CONSTRUED HARMONIOUSLY WITH SECTION 9(A) REMOVES ANY CONSTITUTIONAL DOUBTS.

This court has properly refused to hold statutes unconstitutional except in cases in which determination of the constitutional question was unavoidable. *Becker Steel Co.* v. *Cummings*, 296 U. S. 74; *Stoehr* v. *Wallace*, 255 U. S. 239; *Central Union Trust Co.* v. *Garvan*, 254 U. S. 554. It will not give that construction to a statute which would make the statute unconstitutional if any other reasonable construction will uphold the statute and remove doubts as to its validity.

In the case at bar, there is no necessity to perplex our minds with constitutional doubts. A normal interpretation of section 39, in harmony with sections 2 and 5 and 9(a) of the Act, will give effect to the primary purpose of Congress in enacting section 39. It will likewise preserve unrepealed and unamended section 9(a) protecting the property of friendly resident aliens and at the same time will give full scope to the expanded powers of the Office of Alien Property under section 5. Only compelling language in the statute will be construed as with-

drawing or curtailing the privilege of suit against the United States in recognition of an obligation imposed by the Constitution. *Becker Steel Co. v. Cummings*, 296 U. S. 74.

This court in *Clark* v. *Uebersee Finanz Korporation, A. G.*, 332 U. S. 480, was confronted with a similar situation. See, *Jinsha* v. *McGrath*, 90 F. Supp. 892. The language of this court in the *Uebersee* case is persuasive upon the point under discussion. It notes the purpose of the 1941 amendment to section 5(b) was to reach property under enemy ownership or control but ostensibly in friendly or neutral hands. Such property was placed within reach of the vesting power. The President thus acquired new flexible powers. There was no amendment restricting the scope of section 9(a). We quote from that opinion:

> As we have noted, section 9(a) granted "any person not an enemy or ally of enemy," claiming an interest in property seized, the right to reclaim it. So the provision reads today.
>
> • • • • •
>
> Petitioner therefore suggests that once the seizure is shown to be permissible under section 5(b), there is no remedy for the return of the property under section 9(a). It is said that section 9(a) was designed to provide an ultimate judicial determination of the question whether the property seized was within the vesting power defined in section 5(b). • • • The argument accordingly is that since section 5(b) allows seizure and vesting of "any property or interest of any foreign country or national thereof," a suit to reclaim it is defeated by a mere showing that the claimant is a corporation organized under the laws of another nation.
>
> That is to make the right to sue run not to "any person not an enemy or ally of enemy" as section 9(a) in terms provides but to "any person not an enemy or ally of enemy or national of any foreign country." That would wipe out all suits to reclaim

> property brought by any foreign interest, no matter how friendly. We stated in *Markham* v. *Cabell*, 326 U. S. 404, 410, 411, 66 S. Ct. 193, 196, 90 L. Ed. 165, "the right to sue, explicitly granted by section 9(a) should not be read out of the law unless it is clear that Congress by what it later did withdrew its earlier permission." Such a drastic contraction, if not complete sterilization of section 9(a) * * * should therefore be made only if no other alternative is open.
>
> * * * *
>
> We are dealing with hasty legislation which Congress did not stop to perfect as an integrated whole. Our task is to give all of it—1917 to 1941—the most harmonious, comprehensive meaning possible.
>
> * * * *
>
> We are dealing here with conflict and confusion in the statute. Though neither section 2 nor section 9(a) was amended with section 5(b) in 1941, one of them must be read differently after than before that event. We believe it is more consonant with the functions sought to be served by the act to apply section 2 differently than it was previously applied than to read section 9(a) more restrictively. We believe a more harmonious reading of section 2, section 5(b) and section 9(a) is had if the concept of enemy or ally of enemy is given a scope which helps the amendment of 1941 fulfill its mission and which does not make section 9(a) for the first time in its history and contrary to the normal connotation of its terms stand as a barrier to the recovery of property by foreign interests which have no possible connection with the enemy.

The reasoning in that opinion convinces that sections 2, 5, 9(a) and 39 should be read together and without impairment of the established function of section 9(a) to protect the property of loyal aliens resident in this country. The opinion of Judge Lindley in *Kaku Nagano* v. *McGrath, supra,* is so comprehensive, so reasonable, and so compelling, that it would be a presumption on our part to expand this argument further.

## CONCLUSION

The Guessefeldts have already borne more than their share of the hardships of war. The competence which the petitioner has acquired in 55 years of residence in the United States has been sequestered for no good reason. He is presently living in New York, "and aside from the wages of their daughter who is employed by a New York department store, plaintiff and his wife are without funds." (R. 13).

The opinion in *Stadtmuller* v. *Miller*, 11 F. 2d 732, 735, cites with approval the opinion in the English case of *Margate Pier Co.* v. *Hannam*, 3 Barn. & Ald. 266, 270, in which Abbott, C. J., quotes from Lord Coke as follows:

> "Acts of Parliament ought to be so construed as no man that is innocent or free from injury or wrong, be, by a literal construction, punished or endamaged."

We submit that the judgment in No. 169, *McGrath* v. *Kaku Nagano*, is right. The judgment in the case at bar is wrong and should be reversed with directions.

Respectfully submitted,

ROBERT F. KLEPINGER,
1720 "M" Street, N. W.,
Washington 6, D. C.,
*Attorney for Petitioner.*

WILLIAM W. BARRON,
*Of Counsel.*

## APPENDIX A

Trading With The Enemy Act, ch. 106, 40 Stat. 411, as amended, 50 U. S. C. App. 1 et seq.:

"9(a). Any person not an enemy or ally of enemy claiming any interest, right or title in any money or other property which may have been conveyed * * * to the Alien Property Custodian * * * may file with the said custodian a notice of his claim under oath * * *" and may thereafter institute suit in equity in the Supreme Court of the District of Columbia [now the United States District Court for the District of Columbia] "to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment * * * or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled."

Section 2 defines the terms "enemy" and "ally of enemy" as follows:

"2(a). Any individual * * * of any nationality, resident within the territory * * * of any nation with which the United States is at war * * *.

"(c) Such other individuals * * * as may be natives, citizens, or subjects of any nation with which the United States is at war * * * as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term 'enemy'".

"(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory * * * of any nation which is an ally of a nation with which the United States is at war * * *".

"(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war * * * as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so re-

quire, may, by proclamation, include within the term 'ally of enemy' ".

Section 39, as added July 3, 1948, ch. 826, 62 Stat. 1246, Sec. 12, provides:

> "39. No property or interest therein of Germany, Japan, or any national of either such country vested in or transferred to any officer or agency of the Government at any time after December 17, 1941, pursuant to the provisions of this Act, shall be returned to former owners thereof or their successors in interest, and the United States shall not pay compensation for any such property or interest therein. * * *"

## APPENDIX B

Source References, Legislative History of Section 39 (H. R. 4044, 80th Cong.).

House Report 976;

Senate Report 1742;

Conference Report 2439;

Hearings on H. R. 873, 1823, 1000, 2823, March and April 1947;

Hearings on H. R. 4044, Senate Judiciary Committee;

Debate in the House, 94 Cong. Rec. pp. 550-573, January 26, 1948.

(There was no discussion of Section 39 in the Senate debate on H. R. 4044, Cong. Rec. June 18, 1948, pp. 8937, 8943-8945.)

House Report 976 (to accompany H. R. 4044) states that the purpose of the bill was—

> "based on the firm resolve not to permit the recurrence of events which after the close of World War I led to return of *enemy* property to their former owners. Many properties so returned were again

used by their owners to prepare for war against the United States."

The following analysis of similar provisions in other bills was submitted by the author of the bill (See, Hearings on H. R. 873, 1823, 1000, and 2823, 80th Congress, March and April, 1947, at page 418):

| *Proposed Text* | *Explanatory Notes* |
|---|---|
| 'Sec. 4. All property * * * of all Japanese and German nationals, which on Dec. 7, 1941, was or has been vested in the Alien Property Custodian shall be retained by the United States * * *.' | 'Sec. 4. Provision is made for the retaining of Japanese and German property now vested in the Alien Property Custodian until such time as Congress shall provide for its disposition. *The text is similar to that contained in the resolution terminating the state of war* (World War I) between Germany except for the use of the words 'Imperial Japanese Government.' Final disposition of German property seized during World War I was not made until 10 years after the Armistice was signed. *In 1928, 80% of it was returned and the balance retained which we still possess* * * *.' (Emphasis supplied.) |

The Attorney General expressed the following views on H. R. 4044 (Hearings, 80th Cong., Senate Judiciary Committee, page 111):

"The Department of Justice is unreservedly in favor of the principle of Section 1. The property of

*enemy* countries and *enemy* nationals vested by the Government is, under existing law, the property of the United States. This Government has agreed with other nations that German *enemy* assets within its jurisdiction shall not be returned to German ownership or control * * *." (Emphasis supplied.)

There is no reference in the entire legislative history of H. R. 4044 to sections 2 and 9 of the Trading With The Enemy Act.